

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matter of</b>	)	
	)	
<b>Federal-State Joint Board on</b>	)	
<b>Universal Service</b>	)	
	)	
<b>Commonwealth of Pennsylvania</b>	)	<b>CC Docket No. 96-45</b>
	)	
<b>Petition for Designation as an Eligible</b>	)	
<b>Telecommunications Carrier in the</b>	)	
<b>Commonwealth of Pennsylvania</b>	)	

**PETITION TO REJECT**

The Pennsylvania Emergency Management Agency ("PEMA"), as an executive agency of the Commonwealth of Pennsylvania, hereby respectfully submits this Petition to Reject TracFone Wireless, Inc.'s ("TracFone") self-certification that it is in full compliance with applicable Commonwealth of Pennsylvania 911 and enhanced 911 ("E-911") obligations, including obligations relating to the provision and support of 911 and E-911 service pursuant to paragraph sixteen (16) of Federal Communications Commission ("FCC") Order 08-100.<sup>1</sup>

On April 11, 2008, the FCC, by Order 8-100, granted TracFone conditional designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section

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<sup>1</sup> See *In the Matter of Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45 (April 9, 2008), TracFone Wireless, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the State of New York; Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia; Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts; Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama; Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina; Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee; Petition for Designation as an Eligible Telecommunications Carrier in the State of Delaware for the Limited Purpose of Offering Lifeline Service to Qualified Households; Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire for the Limited Purpose of Offering Lifeline Service to Qualified Households; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania for the Limited Purpose of Offering Lifeline Service to Qualified Households; Petition for Designation as an Eligible Telecommunications Carrier in the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households.

214(e)(6) of the Communication Act of 1934.<sup>2</sup> As a result of this designation, TracFone is eligible to receive universal service Lifeline support in several states including the Commonwealth of Pennsylvania. The FCC Order includes certain requirements that must be satisfied by TracFone as a condition of its ETC designation. Most relevant to this Petition is that TracFone must certify to the FCC that it is in full compliance with any applicable 911/E-911 obligations, including obligations relating to the provision, and support, of 911 and E-911 service in each affected state including Pennsylvania pursuant to paragraph 16 of said Order. In or around June 19, 2008, TracFone certified to the FCC that it was, in fact, compliant with said requirement in the Commonwealth of Pennsylvania.<sup>3</sup> PEMA strongly disagrees that TracFone is in compliance with the applicable requirements pertaining to 911 and E-911 service in Pennsylvania.<sup>4</sup>

PEMA is statutorily responsible for many different aspects of public safety and emergency preparedness. In fact, Pennsylvania's Public Safety Emergency Telephone Act ("PSETA")<sup>5</sup> granted PEMA the powers and duties, among others, to oversee the development, implementation, operation and maintenance of a State-wide integrated wireless E-911 system. PSETA also established a Wireless E-911 Emergency Services Fund ("Fund") that consists of the fees collected under a Wireless E-911 surcharge, funds appropriated by the Commonwealth of Pennsylvania General Assembly and funds from any other source, private or public.<sup>6</sup> The Fund provides for costs incurred by public safety answering points ("PSAPs") and wireless providers for deploying a wireless E-911

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<sup>2</sup> 47 U.S.C. §§151, *et seq.*

<sup>3</sup> Letter to Secretary Marlene H. Dortch, June 19, 2008 (A copy of said letter is attached hereto as Exhibit "A").

<sup>4</sup> On or about November 26, 2008, the Commonwealth of Pennsylvania Office of Attorney General filed suit against TracFone for violation of PSETA.

<sup>5</sup> 35 P.S. §§7011, *et seq.*, as amended.

<sup>6</sup> 35 P.S. §7021.4(a).



system in accordance with the FCC E-911 Order.<sup>7</sup> In particular, the Wireless E-911 surcharge is a \$1.00-per-month fee collected from each wireless customer for each device that provides wireless service for which that customer is billed by a wireless provider for wireless service or receives prepaid wireless telephone service from a wireless provider.<sup>8</sup>

TracFone is a reseller of prepaid wireless service in the Commonwealth of Pennsylvania, and as such, meets the definition of a “wireless provider” pursuant to PSETA.<sup>9</sup> As a wireless provider, TracFone is required to remit the “...\$1.00 per month Wireless E-911 surcharge for each device that provides wireless service...” pursuant to the following PSETA provision:

In the case of prepaid wireless telephone service, the monthly wireless 911 surcharge imposed by this section shall be remitted based upon each prepaid wireless account in any manner consistent with the provider's existing operating or technological abilities, such as customer address, location associated with the MTN, or reasonable allocation method based upon other comparable relevant data and associated with Pennsylvania, for each wireless customer with an active prepaid wireless account and has a sufficient positive balance as of the last day of each month, if such information is available.<sup>10</sup>

Clearly, PSETA does not prescribe the manner in which prepaid carriers are to collect the surcharge from its customers in the Commonwealth of Pennsylvania. Rather, it authorizes prepaid carriers, like TracFone, to collect and remit the surcharge in a manner consistent with its existing operational or technical abilities and allows for reasonable allocation methods to be used to determine surcharge remittance amounts.

Although TracFone had demonstrated its ability to comply with the above provision of PSETA by making two remittances, TracFone has since refused to make any

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<sup>7</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94-102).

<sup>8</sup> 35 P.S. §7021.4(b).

<sup>9</sup> 35 P.S. §7012.

<sup>10</sup> 35 P.S. §7021.4(b)(4).

further remittances to the E-911 Fund in Pennsylvania. TracFone explained to PEMA its willingness to utilize the remittance method prescribed by law in Tennessee<sup>11</sup> to calculate and remit the \$1.00 Wireless E-911 surcharge in Pennsylvania, as this method was compatible with TracFone's existing business model. Since the mandatory language of the above provision of PSETA requires prepaid carriers to remit payments to the Fund "based upon each prepaid wireless account in any manner consistent with the provider's existing operating or technological abilities," PEMA accepted TracFone's proposed use of the Tennessee method as an acceptable remittance alternative. TracFone remitted to the Fund on this basis on October 20, 2004 and January 20, 2005 utilizing, upon information and belief, the Tennessee method. TracFone ceased remitting, however, after its 2005 payment and has not remitted thereafter.

In a letter to PEMA, TracFone explained its refusal to make remittances to the Fund in Pennsylvania, arguing that PSETA did not apply to TracFone's "unique" business model. Moreover, TracFone indicated that it was unwilling to work with PEMA to develop a solution to this impasse until the Pennsylvania General Assembly amended PSETA in a manner that TracFone would interpret as applicable to its "unique" business model.

As a result of TracFone's refusal to make remittances to the E-911 Fund in Pennsylvania, PEMA commenced litigation in the Commonwealth Court of Pennsylvania, seeking declaratory and injunctive relief to compel TracFone's compliance with the remittance requirements of PSETA. PEMA strongly disagrees with TracFone's self-certification of compliance with Commonwealth of Pennsylvania 911 and E-911

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<sup>11</sup> See *Generally*, Tenn. Code Ann. § 7-86-108(a)(1)(B)(iv)(b): a \$1.00 surcharge is remitted for every \$50.00 of prepaid service sold in the state.<sup>11</sup>

obligations, including obligations relating to the provision and support of 911 and E-911 service and respectfully requests that the Commission reject TracFone's self-certification.

**WHEREFORE**, the self-certification of TracFone Wireless, Inc. regarding compliance with Pennsylvania law regarding 911 and E-911 obligations should be rejected.

Respectfully submitted,

**THOMAS W. CORBETT, JR.**  
Attorney General

By:



**PATRICK S. CAWLEY**  
Deputy Attorney General  
PA 85575

**OFFICE OF ATTORNEY GENERAL**  
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**SUSAN J. FORNEY**  
Chief Deputy Attorney General

**Date: January 29, 2009**

**CERTIFICATE OF SERVICE**

I, Patrick S. Cawley, Deputy Attorney General for the Commonwealth of Pennsylvania, hereby certify that on January 29, 2009 I caused to be served a true and correct copy of the foregoing "Petition to Reject" by U.S. Mail, first-class postage prepaid and addressed to the following individuals:

Mitchell F. Brecher, Esquire  
Greenberg Traurig, LLP  
2101 L Street, NW  
Suite 1000  
Washington, DC 20037

Leighton W. Lang, Esquire  
Assistant Vice President & General Counsel  
State Regulatory Affairs  
TracFone Wireless, Inc.  
9700 N.W. 112<sup>th</sup> Avenue  
Miami, FL 33178



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**PATRICK S. CAWLEY**  
**Deputy Attorney General**

**Date: January 29, 2009**



## **EXHIBIT A**

**Federal Communications Commission**

**The FCC Acknowledges Receipt of Comments From ...  
TracFone Wireless, Inc.  
...and Thank You for Your Comments**

**Your Confirmation Number is: '2008619230167 '**

**Date Received:** Jun 19 2008

**Docket:** 96-45

**Number of Files Transmitted: 1**

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*updated 12/11/03*



June 19, 2008

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: CC Docket No. 96-45 Federal-State Joint Board on Universal Service  
TracFone Wireless, Inc. Petitions for Designation as an Eligible  
Telecommunications Carrier

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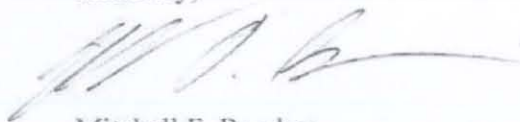
Dear Ms. Dortch:

By order issued April 11, 2008 (FCC 08-100), the Commission designated TracFone Wireless, Inc. as an Eligible Telecommunications Carrier (ETC) pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended, to receive Universal Service Fund support to provide Lifeline service in the states of New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia.

Those ETC designations are subject to certain conditions, including a condition set forth at paragraph 16 of the aforementioned order that TracFone certify that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to provision, and support, of 911 and E911 service. By this letter, TracFone certifies that it is in full compliance with applicable laws in the states of New York, Massachusetts, North Carolina, Pennsylvania, Tennessee, and the District of Columbia.

If there are questions, please communicate directly with undersigned counsel for TracFone.

Sincerely,

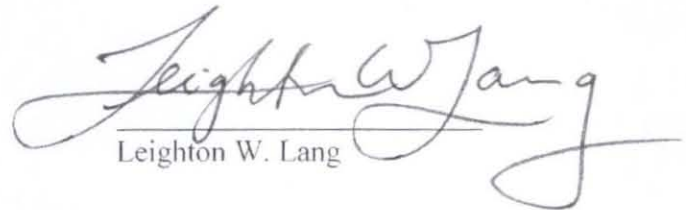


Mitchell F. Brecher

# DECLARATION

I am Leighton W. Lang, Assistant Vice President and General Counsel, State Regulatory Affairs, TracFone Wireless, Inc. My business address is 9700 N.W. 112<sup>th</sup> Avenue, Miami, FL 33178.

I have reviewed the letter from Mitchell F. Brecher, to which this Declaration is attached. All matters stated therein are true and correct based upon information and belief.

  
Leighton W. Lang